IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1849 OF 1981

Sangli Bank Ltd., .. Plaintiff.

vs.

Macmillan Agencies Pvt.Ltd.,
(in Liquidation) through its
Liquidator, High Court,
Bombay. .. Defendant.

Name : Niranjan Ramchandra Sohoni

Age : 53

Religion : Hindu

Occupation : Bank Manager

Address : Flat No. 4, Rupaytan
S.V. Road, Irla
Vile Parle, Mumbai - 400 058.

CORAM : S.U.KAMDAR, J.

DATE : 8th June, 2005.

. I joined the Bank in 1980. In 1979 I was not in the employment of the Plaintiff Bank. In 1981 I was working with the Kolhapur Branch of the Bank. On the basis of the records available with the plaintiff Bank I have stated in para. 3 of my evidence that the documents were executed in respect of the cash credit facility by the defendant no. 1. On the basis of the bank records I have mentioned in para. 9 of my evidence that various amounts as set out therein were due and payable by the defendant no. 1 to the plaintiff Bank. I have not filed the statement of account of the defendant no. 1 in the books of account of the plaintiff bank. I have mentioned the amount outstanding in para. 9 of my evidence on the basis of the report made to higher authorities about the arrears of the defendant no. 1 with the plaintiff bank. I have not filed any such report made to the higher authorities in the course of the present evidence. I am not aware that the word 'received' mentioned on the letter dated 24.2.1982 and the signature put thereon is of the defendant because I did not have any personal knowledge in respect thereof. It is true that I did not have personal knowledge of the transaction by and between the plaintiff and defendant no. 1. It is not true that the plaintiff bank has not maintained the books of accounts of the defendant no. 1 but the same are destroyed due to the white

ants and thus not available. It is true that I have not filed the statement of accounts in the Court. It is not true that there is no documentary evidence available to prove the claim of the plaintiff's bank. It is not true that the statement of accounts are not given to the defendant no. 1.

Evidence closed.

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Liquidator, High Court,
Bombay. .. Defendant.

Mr. U.M. Mahajan for plaintiff.
Ms. M.S. Don for Official Liquidator.

CORAM : S.U.KAMDAR, J.

DATE : 8th June, 2005.

P.C.

. The present suit is filed by the Bank for the recovery of a sum of Rs. 97,876.90, Rs. 30,590.25 and Rs. 1,61,418.01 with further interest on the aforesaid amount at the rate of 18.35% per annum. The claim made by the plaintiff bank arises out of various facilities such as cash credit facility which was granted by the plaintiff to the defendant no. 1 and in respect of hypothecation of various goods. It is the case of the plaintiff bank

that the accounts were irregular and that there was large amount outstanding. It is the further case of the plaintiff bank that the aforesaid amount was due and payable by the defendant no. 1 at the foot of the account as on 30.6.1981 and thus the plaintiffs are entitled to recovery of the aforesaid amount.

2. The defendants have filed written statement dated 28.7.2004 in which the defendant no. 1 has denied his liability to make payment of the aforesaid amounts as due and payable by the defendant no. 1 to the plaintiff bank. The written statement has been filed by the Official Liquidator on behalf of the 1st defendant. The official liquidator has been appointed of the defendant no. 1 company by an order dated 5.10.1983. In the said written statement the liquidator has denied the said claim and has claimed that the plaintiff bank should produce necessary documents in support of their claim. It has also been mentioned that there is no registration of charge under section 125 of the Companies Act, 1956 by the plaintiffs Bank. The plaintiff bank has examined one Mr. Niranjan R. Sohoni who has filed an affidavit of evidence dated 28.7.2004 and has inter alia deposed that there is a due and payable by the defendant no. 1 the aforesaid amount to the plaintiff bank. He has also filed a compilation of documents. The said

documents are tendered in evidence and are marked Exhibit P-1 collectively.

3. In the cross-examination of the said witness he has admitted that he has no personal knowledge of the suit transaction since at the relevant time when transaction took place he was not in service of the plaintiff bank and at the time of filing of the suit he was working in the Kolhapur Branch of the plaintiff bank. He has also stated that he has given evidence on the basis of record available. The statements of accounts in respect of the present suit claim are not available. The said books of accounts, according to the plaintiff bank, are destroyed. He has also failed to produce any secondary evidence. The defendant has cross-examined the plaintiffs witness and in the cross-examination he has stated that the said amount is due and payable by the defendant no. 1 to the plaintiff bank. He has however deposed that he has given his evidence on the basis of the reporting made by the lower officer to the higher officer of the bank. He has not produced any evidence in support of his statement. In any event, such a reporting cannot be made basis of the suit claim and the plaintiff must prove his case by producing necessary evidence to show that the aforesaid amount is due and payable. Even if the original books of

accounts are destroyed the plaintiffs could have produced any secondary evidence in the matter. In absence of account it is not possible for me to grant any relief to the plaintiffs bank. The plaintiffs have failed to show that any amount is due and payable by the defendant to the Bank. In my opinion, the plaintiff has miserably failed to establish the said fact that the amount lent and advanced by the plaintiff bank is outstanding and is due and payable by the erstwhile company and/or the defendant no. 1 who is the liquidator of the said company in liquidation.

4. In the aforesaid circumstances, I have no option but to dismiss the suit as the plaintiff bank failed to prove its claim. The suit is accordingly dismissed. However, there shall be no order as to costs.